IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

WP(C).No. 16415 of 2007(D)

AGAINST THE ORDER IN EP 112/2005 IN
OS.258/1996 of MUNSIFF COURT,CHENGANNUR

.....

PETITIONER:

OMANAKUTTAN PILLAI, AGED 59 YEARS,
VADAKKEMURIYIL VEETIL, THIRUVANVANDOOR,
CHENGANNUR, ALAPPUZHA.

BY ADV. SRI.P.VINODKUMAR

RESPONDENTS:

K.K.RAMACHANDRA PANICKER,
KIZHAKKETHIL VEETIL, THIRUVANDOOR,
CHENGANNOOR, ALAPPUZHA.

BY ADV. SRI.V.MANOJ KUMAR
SRI.IYPE JOSEPH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF OBJECTION FILED BY PETITIONER BEFORE THE MUNSIFF'S COURT, CHENGANNUR DT.24.11.2006 IN E.P.112/05

EXT.P2: -DO- OF ORDER OF THE MUNSIFF'S COURT, CHENGANNUR IN E.P.NO:112/05 DT.20.3.2007

EXT.P3: -DO- OF MEDICAL CERTIFICATE ISSUED TO THE PETITIONER BY DRO.OOMMEN CHERIYAN, G.K.HOSPITAL, TIRUVALLA DT.21.2.2000

JJ /TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 16415 OF 2007 D

Dated this the 1st August, 2007.

JUDGMENT

This writ petition is filed to set aside Ext.P2. The writ petitioner is the judgment debtor in the execution petition. For the realisation of the amount the property belonging to him was sold in auction and the decree holder with the permission of the court bid it for Rs.70,100/- and after appropriating the amount due deposited the balance amount on the very same day and I am informed that the sale was confirmed at about 11.05 a.m. on 30.5.2007. The petitioner herein did not move his little finger to set aside the sale under Order XXI Rule 90 CPC or to deposit the amount under Order XXI Rule 89 and now he has filed a writ petition for redressal of the grievance. So legally he is not entitled for any relief. Counsel for the decree holder is also heard. The decree holder is more concerned about the the amount rather than the property. So, if the writ petitioner herein pays the amount within a stipulated time of two months then naturally the decree holder is inclined to relinquish his right which he had obtained by virtue of the auction purchase. I feel that to avoid unnecessary expenditure the court need not issue a sale certificate now. If the writ petitioner pays 50% of the

amount due within a period of one month and pays the entire decree amount with the expenses incurred by the decree holder for executing the decree inclusive of costs then the court below shall set aside the sale giving benefit on the ground that the decree holder does not want the property. If 50% of the amount is not paid within one month as directed, the court below shall issue sale certificate in favour of the decree holder and the decree holder will be entitled to proceed in accordance with law for delivery of the property as well. When the amount is deposited and he relinquishes his right, the decree holder shall be permitted to withdraw the entire amount and the writ petitioner herein shall not raise any objection and is not entitled to do it. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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